

REPORT OF THE
COMMITTEE ON LAW REFORM

To the Members of the Pennsylvania Bar Association:

GENTLEMEN: At our last meeting the further consideration of the proposed Act relating to Boroughs (page 67) was postponed until the present meeting of the Association (page 260). Your Committee referred that Act to a subcommittee who have been giving careful attention to the subject, but are not yet ready to report. We suggest, therefore, a further postponement of consideration thereof.

There was also referred to the Committee a proposed act relating to the acknowledgment and recording of deeds (page 299), the purpose of which was to do away the ninety days' time allowed to record deeds and mortgages. The Committee report unfavorably upon this proposed Act. It was in fact presented to the last Legislature and defeated in the House of Representatives.

In 1901 a resolution was duly adopted as follows (page 193):

“Resolved, That the Committee on Law Reform be instructed to take up the subject of the registration of land titles and to arrange for a presentation and discussion thereof; and, if found desirable, to report a general Act providing for the perpetuation of land titles, superseding or alternative with the present system of recording.”

Last year the Committee reported progress (pages 66, 67). Your Committee this year has arranged to have a paper read by Charles Wetherill, Esq., of Philadelphia, favoring the system, and a paper in reply thereto by Paul H. Gaither, Esq., of Greensburg. In order that the matter may be intelligently discussed after the papers are read, Mr. Wetherill has kindly drafted four several Acts on the subject, and they will be found printed as an appendix to this report.

ALMA MATER

YEARLY STATE

In 1901 also (page 191) there was referred to this Committee a resolution directing us to "examine into the divorce laws of this Commonwealth, with reference to the administration of the system," and to report any desired changes. The Committee last year (pages 64, 66) reported various suggestions which had been submitted to them, but added:

"The Committee are of opinion that before attempting to frame any measure looking to uniformity of procedure, it is desirable to have a full discussion of the subject by the Association."

No discussion was had, and the present Committee have, therefore, considered that there was nothing now to be done by them.

Last year also there was reported to the Association "An Act providing that a suit wrongly begun in equity may be continued at law with the same effect as if originally begun at law" (page 127).

It provoked some discussion, but subsequently on a rising vote was approved (page 295). Your Committee later received a number of communications in relation to the subject, complaining principally that it allowed the question of jurisdiction, which always ought to be raised *in limine*, to be raised at any time, and even when thus raised did not provide for the several contingencies presented. It was deemed best, therefore, to be more comprehensive, and the following bill was prepared, which is believed to be entirely equitable and fair:

AN ACT

IN RELATION TO EQUITABLE PROCEEDINGS WHEREIN IT IS OR MIGHT HAVE BEEN ALLEGED THAT THERE WAS AN ADEQUATE REMEDY AT LAW.

SECTION 1. When a bill in equity has been filed in any court of this Commonwealth, if the defendant desires to question the jurisdiction of the court upon the ground that there is a full, complete and adequate remedy at law, he must do so by demurrer or

answer explicitly so stating, otherwise the right of trial by jury shall be deemed to have been waived by both parties, and the cause shall proceed to a final determination by said court and upon appeal with the same effect as if upon a hearing before the court without a jury upon agreement filed.

SEC. 2. If a demurrer or answer be filed averring that the plaintiff has a full, complete and adequate remedy at law, that issue shall be decided *in limine* before a hearing of the cause upon the merits. If the court shall decide that a court of equity has jurisdiction the plaintiff shall not thereafter be permitted to question the decision upon that ground, nor shall a decree in defendant's favor be reversed or set aside because the remedy at law is adequate. If the court shall decide that the remedy at law is adequate it shall certify the cause to the law side of the court at the costs of plaintiff, and no further proceedings shall be had at the instance of plaintiff until those costs are paid, except that he may appeal from the order made. In addition the defendant shall be entitled at any time to enter and serve a rule to show cause why the suit should not be dismissed unless said costs are paid within fifteen days. Said rule shall be of course, and upon failure to pay the court shall dismiss the bill at plaintiff's costs.

SEC. 3. If upon an appeal after a decision upon the merits, the question of an adequate remedy at law is not specifically raised by the defendant's assignments of error the question shall be deemed to have been waived, and the decree below shall not be reversed or set aside because the remedy at law is adequate. If it is so raised and the decision of the appellate court is that the remedy at law is adequate, it shall remit the cause to the court below with directions to transfer it to the law side of that court, all the costs in the cause to abide the final determination thereof in the court of law. The plaintiff shall not be permitted to raise the question upon his appeal after a decision upon the merits, nor shall the decree below be reversed or set aside upon his appeal because the remedy at law is adequate.

Your Committee have also drafted and submit for your approval Acts of Assembly on the subject of Sheriff's and Coroner's Deeds, Deeds and Mortgages. As will be at once seen the object of these Acts is simplicity. The most striking thing about our existing conveyancing forms is their redundant verbiage. In these days when directness is so great a desideratum, when more than ever before the doing

of those things for which there is no real need is in the life of business but a forerunner of failure, those forms are startlingly out of place. The mere waste of time in their writing is no small matter, but their copying on the records, the cost thereof and the enormous and ever increasing space required for their preservation in our populous counties, is a matter of most grave concern. The Allegheny County Bar has in this, as in many other matters, been most progressive in endeavoring to meet and overcome the difficulty, but recognizes the fact that it cannot be really compassed except by statutory enactments. The requirement that Sheriff's and Coroner's Deeds shall be recorded in the Recorder of Deeds' office is but returning to the methods of long ago, instead of adhering to a useless custom which has grown up, no one knows exactly how, of recording such deeds in the Sheriff's Deed Books in the Prothonotary's office. Such recording is of no value, for a certified copy thereof is evidence for no purpose, the law as it now is only requiring a note thereof to be made in the record of the particular case:

Seechrist v. Baskin, 7 W. & S., 403.
Foulke v. Millard, 108 Pa., 233.

whereas such deeds, if recorded in the Recorder' of Deeds' office, become, as also does a certified copy thereof, evidence for all purposes where the original itself would be.

The Acts are as follows:

AN ACT

RELATING TO SHERIFF'S AND CORONER'S DEEDS.

SECTION 1. From and after the period of three months from the approval of this Act, Sheriff's and Coroner's deeds shall be made in the following form:

KNOW ALL MEN BY THESE PRESENTS, That I
 Sheriff (or Coroner) of the County of in the
 State of Pennsylvania, for and in consideration of the sum of
 Dollars to me in hand paid do hereby grant and

convey to (here describe the grantee or grantees and the property conveyed with recital of title, if desired) the same having been sold by me to the said grantee .. on the day of A. D. 19 .. after due advertisement according to law, under and by virtue of a writ of (here name the writ) issued on the day of A. D. out of the (here name the Court) as of Term, 19 .. No. at the suit of (here name the plaintiff or plaintiffs) against (here name the defendant or defendants and *terre* tenant or *terre* tenants if any).

IN WITNESS WHEREOF I have hereunto affixed my signature this day of A. D.

COMMONWEALTH OF PENNSYLVANIA, ss:

Before the undersigned (Prothonotary or Clerk or deputy as the case may be) of the (here name the Court) personally appeared Sheriff (or Coroner) of County aforesaid, and in due form of law declared that the facts set forth in the foregoing deed are true and that he acknowledged the same in order that said deed might be recorded.

WITNESS my hand and the seal of said Court this day of A. D.

SEC. 2. Unless expressly limited to a lesser estate such deeds shall be effective to pass to the grantee or grantees named therein a fee simple title to the premises conveyed, if the defendant or defendants possessed such title, though technical words of inheritance be not used.

SEC. 3. On being paid his charge for acknowledgment and the cost of registering and recording, the Sheriff or Coroner shall acknowledge any such deed before the Prothonotary or Clerk of the Court out of which the said writ issued, or his deputy, except in cases of *testatum* writs, when the acknowledgment shall be made before the Prothonotary or Deputy Prothonotary of the Court of Common Pleas of the County in which the property is situate, on any day, Sundays and holidays excepted, and the fact of such acknowledgment shall be forthwith entered on the record of the particular cause. If no exceptions to such sale be filed before acknowledgment, or within five days thereafter, the deed shall be

considered as delivered, and the Sheriff or Coroner shall forthwith cause it to be registered in the proper office, if registry be required, and recorded in the office for Recording of Deeds, etc., for said County.

SEC. 4. Such deeds need not be acknowledged in open court, nor recorded in whole or in part in the office of said prothonotary or clerk, but the Recorder of Deeds shall immediately give to the said prothonotary or clerk a certificate stating the place of record thereof and the latter shall note the same on the docket of the particular case.

SEC. 5. The Recorder of Deeds shall index such deeds in the grantee index in the name of the grantee or grantees therein, and in the grantor index in the name of the Sheriff or Coroner, in the name of the defendant or defendants and in the name of the *terre* tenant or *terre* tenants; and the record thereof or a duly certified copy of such record shall be evidence in all cases where the original deeds would be evidence.

AN ACT

RELATING TO MORTGAGES, THEIR ACKNOWLEDGMENT, VALIDITY AND RECORD, AND THE EFFECT THEREOF.

SECTION 1. From and after the passage of this Act all mortgages in substantially the following form:

KNOW ALL MEN BY THESE PRESENTS that (here describe the mortgagor or mortgagors) acknowledge to be indebted to (here describe the mortgagee or mortgagees) in the sum of Dollars and for the purpose of better securing payment thereof do .. hereby grant and convey in mortgage to said mortgagee.. (here describe the property mortgaged, with recital of title, if desired) and hereby agree.. that if do.. not at the expiration of from the date hereof, and at the expiration of each thereafter, pay to said mortgagee.. or assigns interest on said debt at the rate of per centum per annum, or do.. not pay said debt at the expiration of years from the date hereof; or do.. not pay all taxes, water rents, municipal or other public assessments or charges payable out of said property within three months after the same become due; or do.. not at all times keep the buildings upon said property insured from loss by fire in favor of said mortgagee.. in at least the sum of \$.....

and forthwith deliver the policies or renewal receipts to
 that then and in any such event a writ or writs of *scire facias* may
 after days issue upon this mortgage to recover
 the whole of said debt with all accrued interest thereon, and also
 all sums paid by the said mortgagee.. or assigns
 for taxes, water rents, municipal or other public assessments or
 charges, and insurance, and with legal interest thereon from the
 time of their payment, and an attorney's commission for collection
 of per centum of the amount of said debt; and in
 that event hereby waive the benefit of all appraisement,
 stay and exemption laws now in force or hereafter to be passed
 so far as the mortgaged property is concerned. (Here may be
 inserted any special agreement the parties desire, and any refer-
 ence to other obligations given for the same indebtedness.)

WITNESS signature.. this day of
 A. D. 19..

Witnesses present:

COMMONWEALTH OF PENNSYLVANIA, }
 COUNTY OF } ss:

Before the undersigned (here state the official title of the
 officer taking the acknowledgment) personally appeared (here
 name the mortgagor or mortgagors) to me known to be the mort-
 gagor.. above described and acknowledged to me that
 had signed said mortgage in order that it might be duly recorded.

WITNESS my hand and official seal this day of
 A. D. 19..

shall have all the force and effect of defeasible deeds, may be
 recorded in the office for the recording of deeds in and for the
 proper county, as other mortgages are recorded, and with the same
 force and effect; and writs of *scire facias* may be issued thereon in
 accordance with their terms to foreclose the equity of redemption
 of the mortgagor or mortgagors, his or their heirs and assigns,
 followed by judgment and execution and with the same effect as is
 now or shall be provided by law in cases of mortgages; but tech-
 nical words of inheritance shall not be needed in such mortgages
 in order to pass a fee simple title to said premises upon foreclosure

proceedings if the mortgagor or mortgagors had or thereafter had acquired a fee simple title thereto.

SEC. 2. The agreement in the above form providing under what circumstances writs of *scire facias* may be issued and what may be recovered in case they are, may be changed to meet the actual agreement of the parties, and a corporate acknowledgment may be taken in such manner as is now or may hereafter be provided by law, without in any manner impairing the effect of the mortgage as herein set forth.

SEC. 3. Nothing herein contained shall be so construed as to require that mortgages be made in the form aforesaid, or to affect or impair the right to proceed by bill in equity or otherwise, instead of by writ of *scire facias*, when the facts justify such action.

AN ACT

RELATING TO DEEDS, THEIR ACKNOWLEDGMENT, VALIDITY AND RECORD, AND THE EFFECT THEREOF.

SECTION 1. From and after the passage of this Act all deeds in substantially the following form:

KNOW ALL MEN BY THESE PRESENTS that (here describe the grantor or grantors) for and in consideration of (here state the consideration) received by do hereby grant and convey to (here describe the grantee or grantees and the property conveyed with recital of title, if desired, and the trusts if any) and do.. hereby warrant (either generally or specially) the title hereby conveyed.

Witness signature.. this day of A. D.

Witnesses present:

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF } ss:

Before the undersigned (here state the official title of the officer taking the acknowledgment) personally appeared (here name the grantor or grantors) to me known to be the grantor .. above described, and acknowledged to me that had signed said deed in order that it might be duly recorded.

Witness my hand and official seal this day of A. D.

shall when delivered be effective to pass to the grantee or grantees named therein, and to his or their heirs and assigns the estate of the grantor or grantors with all the appurtenances belonging thereto, unless expressly limited to a lesser estate; and may be recorded in the office for the recording of deeds in and for the proper county with the same effect as is given to any other deeds duly executed, acknowledged, delivered and recorded.

SEC. 2. Where the grantor in the deed is a corporation the acknowledgment thereof may be made in such manner as is now or may hereafter be provided by law, without in any wise impairing the effect of the grant as herein set forth.

SEC. 3. Technical words of inheritance shall no longer be necessary in order to convey a fee simple title to the grantee or grantees named in any deed, but the grant in all cases shall be presumed to be in fee simple unless expressly limited to a lesser estate.

SEC. 4. Where the title is warranted generally it shall be the duty of such of the grantor or grantors, as are conveying in their own right, to defend the title against any and all encumbrances not expressly excepted in the agreement of sale, in the conveyance, or in the settlement therefor; and where it is specially warranted it shall be his or their duty to defend it against any and all encumbrances arising during his or their ownership thereof if not thus excepted; but the parties may limit or extend the agreement of warranty without otherwise impairing the effect of the grant as herein set forth. Successive suits may be brought upon the agreement of warranty as breaches thereof from time to time may appear.

SEC. 5. Nothing herein contained shall be so construed as to require that deeds be made in the form aforesaid.

It has been suggested also that the value of the change could be best understood if deeds and a mortgage completed, as they would be under the proposed Acts, should be hereto attached, and it is accordingly so done.

FORM OF SHERIFF'S DEED

Know All Men by These Presents that I, John Jones, Sheriff of the County of Dauphin in the State of Pennsylvania, for and in consideration of the sum of Five thousand Dollars to me in hand paid do hereby grant and convey to William Smith of the City of Harrisburg in said County, Attorney at Law, All That Certain lot or piece of ground with the four story building thereon erected Situate at the North East corner of First and Main Streets in said City, containing in front or breadth on said Main Street Fifty feet and extending of that width along the North side of said First Street One hundred feet to a ten feet wide alley, running from said First Street to Second Street (Being the same premises which James Clark by Indenture dated January 1st, 1895, and recorded in said County in Deed Book No. 185, page 250, &c., granted and conveyed to Henry Brown in fee) the same having been sold by me to said grantee on the 1st day of June A. D. 1903, after due advertisement according to law, under and by virtue of a writ of *levari facias* issued on the fourth day of May, A. D. 1903, out of the Court of Common Pleas of said County, as of January Term, 1903, No. 333, at the suit of the said William Smith against the said Harry Brown, defendant, and George Robinson, *terre* tenant.

In witness whereof I have hereunto affixed my signature this fifteenth day of June, A. D. 1903.

JOHN JONES,
Sheriff.

COMMONWEALTH OF PENNSYLVANIA, ss:

Before the undersigned, prothonotary of the Court of Common Pleas of Dauphin County, Pennsylvania, personally appeared John Jones, Sheriff of Dauphin County aforesaid, and in due form of law declared that the facts set forth in the foregoing deed are true, and that he acknowledged the same in order that said deed might be recorded.

Witness my hand and the seal of said Court this fifteenth day of June, A. D. 1903.

ALFRED CLARK,
Prothonotary.

[Seal of Court]

FORM OF MORTGAGE.

Know All Men By These Presents that I, William Smith, of the City of Harrisburg, Dauphin County, Pennsylvania, Attorney at Law, acknowledge myself to be indebted to Frank Wilson of said City, County and State, Merchant, in the sum of Three thousand Dollars, and for the purpose of better securing payment thereof do hereby grant and convey in mortgage to said mortgagee All that certain lot or piece of ground with the four story building thereon erected Situate at the North East corner of First and Main Streets in said City, containing in front or breadth on said Main Street fifty feet and extending of that width along the North side of said First Street one hundred feet to a ten feet wide alley, running from said First Street to Second Street (Being the same premises which John Jones, Sheriff of said County, by deed poll bearing even date herewith and intended to be forthwith recorded, granted and conveyed to me in fee) and hereby agree that if I do not at the expiration of six months from the date hereof, and at the expiration of each six months thereafter, pay to said mortgagee or his assigns interest on said debt at the rate of five per centum per annum; or do not pay said debt at the expiration of three years from the date hereof; or do not pay all taxes, water rents, municipal or other public assessments or charges payable out of said property within three months after the same become due; or do not at all times keep the buildings upon said property insured from loss by fire in favor of said mortgagee in at least the sum of \$3000, and forthwith deliver the policies or renewal receipts to him; that then and in any such event a writ or writs of *scire facias* may after thirty

days issue upon this mortgage to recover the whole of said debt with all accrued interest thereon, and also all sums paid by said mortgagee or his assigns for taxes, water rents, municipal or other public assessments or charges and insurance, and with legal interest thereon from the date of their payment, and an attorney's commission for collection of three per centum of the amount of said debt; and in that event I hereby waive the benefit of all appraisement, stay and exemption laws now in force or hereafter to be passed so far as the mortgaged property is concerned. The debt to secure which this mortgage is given is also evidenced by a bond and warrant of attorney of like date and amount given by me to said mortgagee.

Witness my signature this fifteenth day of June, A. D. 1903.
WILLIAM SMITH.

Witnesses present:

SAMUEL DICKSON,
C. LA RUE MUNSON.

COMMONWEALTH OF PENNSYLVANIA, } ss:
COUNTY OF DAUPHIN.

Before the undersigned, a Notary Public for the Commonwealth of Pennsylvania, residing in Harrisburg in said State, personally appeared William Smith, to me known to be the mortgagor above described, and acknowledged to me that he had signed said mortgage in order that it might be duly recorded.

Witness my hand and official seal this fifteenth day of June, A. D. 1903.

CHARLES MILLER,
Notary Public.

Commission expires June 1, 1906.

[Notarial Seal]

COPY OF DEED.

Know All Men by These Presents that we William Smith of the City of Harrisburg, Dauphin County, Pennsylvania, and Mary, his wife, for and in consideration of the sum of One thousand Dollars received by us, do hereby grant and convey to George Robinson of said City, County and State, Physician, All that Certain lot or piece of ground with the four story building thereon erected Situate at the North East corner of First and Main Streets in said City, containing in front or breadth on said Main Street fifty feet and extending of that width along the North side of said First Street One hundred feet to a ten feet wide alley, running from said First Street to Second Street, subject to a mortgage of Three thousand Dollars this day given by the said William Smith to Frank Wilson (Being the same premises which John Jones, Sheriff of said County, by deed poll bearing even date herewith and intended to be forthwith recorded, granted and conveyed unto the said William Smith in fee), and do hereby warrant generally the title hereby conveyed.

Witness our signatures this fifteenth day of June, A. D. 1903.

WILLIAM SMITH,
MARY SMITH.

Witnesses present:

SAMUEL DICKSON,
C. LA RUE MUNSON.

COMMONWEALTH OF PENNSYLVANIA, } ss:
COUNTY OF DAUPHIN.

Before the undersigned, a Notary Public for the Commonwealth of Pennsylvania, residing in Harrisburg in said State, personally appeared William Smith and Mary, his wife, to me known to be the grantors above described, and acknowledged to me that they had signed said deed in order that it might be duly recorded.

Witness my hand and official seal this fifteenth day of June, A. D. 1903.

CHARLES MILLER,
Notary Public.

Commission expires June 1, 1906.

[Notarial Seal]

At the last meeting there was also referred back to this Committee with directions to report at this meeting (page 289) a proposed Act relative to procedure (page 117). The Act as then submitted caused much debate, as an Act of that character invariably does. At the request of the Committee, two of its members, Judge McPherson and Mr. Niles, drafted Acts on the subject, and they are herewith submitted. The Committee has not passed upon either of them, but they are now presented in the hope that a discussion may be had upon them which will greatly assist the Committee in reporting a satisfactory Act at the meeting of 1904.

JUDGE MCPHERSON'S DRAFT

A SUPPLEMENT

TO AN ACT ENTITLED "AN ACT PROVIDING FOR THE ABOLITION OF THE DISTINCTIONS HERETOFORE EXISTING BETWEEN ACTIONS EX CONTRACTU AND ACTIONS EX DELICTO, SO FAR AS RELATES TO PROCEDURE AND PROVIDING FOR TWO FORMS OF ACTIONS AND REGULATING THE PLEADINGS THEREUNDER," APPROVED THE TWENTY-FIFTH DAY OF MAY, ANNO DOMINI ONE THOUSAND EIGHT HUNDRED AND EIGHTY-SEVEN, PROVIDING HEREBY THAT IN CERTAIN SUITS THE PLAINTIFF SHALL FILE WITH HIS DECLARATION A SWORN SPECIFICATION OF THE ITEMS OF HIS CLAIM, TO WHICH THE DEFENDANT SHALL BE REQUIRED TO MAKE AN AFFIDAVIT OF DEFENCE, AND THAT ALL AVERMENTS OF FACT IN THE DECLARATION NOT DENIED BY THE AFFIDAVIT OF DEFENCE SHALL BE TAKEN AS TRUE ON THE TRIAL OF THE CAUSE, AND MAKING SIMILAR PROVISIONS CONCERNING THE AVERMENT OF SET-OFF, DEFALCATION, RECOUPMENT OR COUNTER-CLAIM BY A DEFENDANT.

SECTION 1. Be it enacted, etc., That in all actions now pending, or hereafter begun, in any court of record of this Commonwealth on any contract, express or implied, including proceedings by *scire facias* and by the writ of foreign attachment, the plaintiff shall set out in full the facts constituting his cause of action and shall also file as a part of his declaration a specification of the items of his claim, together with true copies of all books and writings that may be sued upon: but if the contract sued upon is a public record, it need not be copied, but need only be referred to by giving

the volume and page, where the record may be found. The declaration shall be verified by affidavit and the defendant shall file an affidavit of defence thereto. All items of the plaintiff's claim and all averments of fact in the declaration that are not directly, specifically and positively traversed and denied by the affidavit of defence shall be regarded as admitted and shall be taken on the trial of the cause to be true.

SEC. 2. This act shall apply also to a sworn statement of set-off, defalcation, recoupment or counter claim, if such be averred in the defendant's affidavit of defence. The defendant shall notify the plaintiff that such averment is filed and the plaintiff within fifteen days after such notice shall file a sworn reply and all items of the statement of set-off, defalcation, recoupment or counter claim, and all averments of fact in the defendant's affidavit of defence that are not directly, specifically and positively traversed and denied, either by the reply of the plaintiff or by his original statement, shall be regarded as admitted and shall be taken on the trial of the cause to be true. If the plaintiff fails to file his reply according to the requirements of this section, judgment of *non pros* for want of a reply may be entered by the prothonotary on *præcipe* of the defendant, and if the defendant fail to file his affidavit of defence according to the requirements of this act judgment for want of an affidavit of defence may be entered by the prothonotary on *præcipe* of the plaintiff.

SEC. 3. On the trial of any cause to which this act applies no evidence shall be received concerning any fact not substantially averred as a ground of action or matter of defence in the statement, affidavit of defence or reply, provided that either party may, as of course, at any time before the cause is placed on the trial list, supplement his statement, affidavit of defence or reply, giving notice thereof in writing to the opposite party or his attorney, within fifteen days after the filing of such supplemental matter. But after the cause has been placed on the trial list, no such supplemental matter shall be filed except on special allowance by the court and upon such terms as to notice, costs and continuance as may be just and proper. The averments in the supplemental matter shall be replied to in the same manner as the averments in the original declaration or affidavit of defence.

SEC. 4. This Act shall apply to appeals from the judgments of justices of the peace, aldermen and magistrates, and in all such appeals the plaintiff shall file his sworn declaration and notify the defendant thereof and thereupon it shall be the duty of the defendant to file his affidavit of defence within fifteen days.

SEC. 5. All affidavits required by this Act may be made by the party or his agent, but when made by an agent must set forth the reason why such affidavit is not made by the party, and if in the opinion of the court the reason is not sufficient the affidavit may be treated by the court as a nullity. All statements of fact which are within the affiant's knowledge shall be sworn and affirmed to be true, and all other statements of fact shall be sworn or affirmed to be true as affiant is informed and believes and expects to be able to prove on the trial of the cause. Where any material averment of fact contained in the declaration or affidavit of defence is peculiarly within the knowledge of the party averring the same, and the other party has no knowledge thereof and is therefore unable to deny the same specifically, he may so state in his affidavit and demand proof thereof at the trial of the cause, which shall be taken to be a sufficient denial of said fact.

SEC. 6. Nothing in this Act shall alter or change the present law and practice concerning pleas and demurrers, nor concerning appearances and judgments for want of an appearance, nor concerning the power of the courts to open, vacate or strike off judgments by default. But all general, special or local laws concerning affidavits of defence are hereby repealed and all rules of court concerning such affidavits are declared to be of no effect, so far as they apply to cases covered by this Act.

MR. NILES' DRAFT

AN ACT

PROVIDING FOR THE ABOLITION OF THE DISTINCTION BETWEEN ACTIONS *EX-CONTRACTU* AND *EX-DELICTO*, SO FAR AS RELATES TO PROCEDURE; AND PROVIDING FOR ONE FORM OF PROCEDURE TO BE CALLED "AN ACTION"; AND REGULATING THE PLEADINGS THEREUNDER.

SECTION I. (1) Be it enacted, etc., that so far as relates to procedure, the distinctions heretofore existing between actions be abolished, and all demands *ex-contractu* or *ex-delicto* shall hereafter be sued for and recovered in one form of procedure to be called "An Action."

(2) The pleadings in every action shall be:

(a) The Declaration; which shall consist of a concise statement of the plaintiff's demand; and if plaintiff's demand is founded

upon records, writings or book entries, shall contain copies thereof. If plaintiff's demand is founded upon the record of any court within the county in which the action is brought, or upon any lien filed therein, or deed, mortgage, or other instrument recorded therein, explicit reference to such record shall be sufficient in lieu of a copy thereof.

(b) The Affidavit of Defence; which shall consist of a concise statement of the defendant's defence to the plaintiff's demand as set forth in the Declaration, and of all facts of set-off, counter claim and defalcation, with copies of all writings and book entries and explicit reference to records, in the same manner and effect as required in the Declaration.

(c) The Replication; which shall consist of a concise statement of the plaintiff's reply to all new matter pleaded in the Affidavit of Defence.

(d) If new matter be alleged in the Replication or other subsequent pleading, it may be traversed or met by other appropriate pleading until issue is joined upon all the material facts of the case.

SEC. II. All material allegations of fact, specifically averred in any pleading, not specifically and positively denied by the other party in appropriate pleading, shall be taken as admitted.

SEC. III. Every pleading under this Act shall be filed in the prothonotary's office and a copy thereof served upon the opposite party, or his attorney of record, fifteen days before he shall be required to file his pleading thereto, but no judgment may be moved for want of an Affidavit of Defence until after the return day and due proof of service of the original writ or entry of an appearance on behalf of the defendant. Service of a copy of a pleading may be in the same manner as is required in service of summons.

SEC. IV. All pleadings, except those filed by executors, administrators, guardians, committees of lunatics, or other trustees acting in a representative capacity, shall be verified by the oath or affirmation of the party or his agent or attorney familiar with the facts, or, in case of a corporation, by an officer or agent or attorney familiar with the facts alleged.

Wilfully and knowingly making a false affidavit to a pleading shall be deemed perjury.

SEC. V. On the trial, no evidence shall be admitted concerning any fact not substantially averred in the proper pleading, provided that the right to amend with the permission of the court shall remain as heretofore.

SEC. VI. This Act shall apply to appeals to the court of common pleas from all inferior tribunals.

SEC. VII. A party before taking further steps in the case may file exceptions to any pleading of his adversary, which exceptions shall particularly specify the grounds thereof, and a rule may be taken to show cause why judgment should not be entered for want of a sufficient Affidavit of Defence or other pleading; which rule shall be determined at such time as the court may fix by special or general order.

If upon determination of such rule the court shall direct judgment to be entered against a party and the amount thereof can be ascertained from the pleadings, judgment shall be for such amount. If the damages cannot be so ascertained by the court, the action shall proceed to trial in usual course and the issue be confined to the liquidation of the amount of damages.

SEC. VIII. Whenever the Affidavit of Defence admits the plaintiff's demand in part, judgment may be entered therefor, although a sufficient defence may be set up to the remainder of the claim and this judgment shall be final for purposes of execution. A second judgment shall be entered at the end of the suit. Whenever the Affidavit of Defence admits the plaintiff's demand in full but claims a set-off smaller than the plaintiff's demand, the plaintiff may admit the set-off in his reply and may thereupon direct judgment to be entered against the defendant for the difference between the two claims. And the judgment shall be final concerning both claims.

SEC. IX. Nothing in this Act shall alter or change the present law and practice concerning appearances, nor concerning the power of the court to extend the time for filing of a pleading for cause or to open, vacate or strike off judgments by default. All general, special and local laws concerning Affidavits of Defence and pleading inconsistent herewith or supplied hereby are hereby repealed.

In view of the fact that the Governor has vetoed so many bills passed by the last Legislature because, as he said, they were so imperfectly drawn as to leave him in grave doubt as to their meaning, it may not be inappropriate at this time to recall attention to the Act suggested by this Committee in 1896 entitled "An Act providing for the appointment and payment of Legislative Commissioners, prescribing their duties, and the duties of the Legislature in reference to proposed legislation" (Report of 1896, page 73)

which was approved with some minor amendments by this Association (page 114), but which failed of passage by the legislature of 1897, because as stated by this Committee (Report of 1897, page 49) :

“It was not to be expected that so radical a proposition could be approved on the occasion of its first presentation, however great its advantages, and your committee, therefore, while regretting its present failure, feel no sense of disappointment by reason thereof.”

And it may be asked, is the time now ripe for a second attempt?

ALEX. SIMPSON, JR.,
Chairman.

APPENDIX.

DRAFTS OF ACTS OF ASSEMBLY FOR THE GRADUAL ADOPTION IN PENNSYLVANIA OF A SYSTEM FOR RECORDING OF TITLES IN CLAIMS TO, AND LIENS AGAINST, LAND, BY JUDICIAL PROCESS. PREPARED FOR THE COMMITTEE OF LAW REFORM OF THE PENNSYLVANIA BAR ASSOCIATION, BY CHARLES WETHERILL, APRIL 18, 1903.

AN ACT

Drafts for Acts of Assembly. REGULATING THE LIEN OF JUDGMENTS IN PERSONAL ACTIONS AND DIRECTING PLAINTIFFS TO SPECIFY OF RECORD THE LAND SUBJECT TO SUCH LIENS.

Act 1. I. Be it enacted, etc. That from and after the passage of this Act it shall be the duty of all plaintiffs obtaining judgment or entering judgment upon confession or agreement in personal actions in any Court of Record in this Commonwealth, to file of record in the cause within thirty days after the entry of judgment, a statement setting forth the place of residence and the business or occupation, if any, of the defendant, or defendants, against whom such judgment is entered, and a full description of all the lands, or estates or interests in land of such defendant, within the jurisdiction of the Court and subject to the lien of such judgment, with reference to the deed, will, record or descent under which the title of such defendant is derived, and that such statement shall be made on the oath or affirmation of the plaintiff, or of some person on behalf of the plaintiff, having knowledge of the facts: Provided that the lien and claim of such judgments shall expire at the end of thirty days from the entry thereof as to all lands of defendants not specified as required by the provisions hereof.

II. That from and after the passage of this Act no lien shall attach or execution be levied on the lands of defendants acquired after the entry of judgment, until a statement such as aforesaid has been filed of record as aforesaid, by or on behalf of the plaintiff.

III. That all Acts and parts of Acts inconsistent with the provisions hereof are hereby repealed.

AN ACT

TO REGULATE CLAIMS TO LANDS WITHIN THIS COMMON-
WEALTH BASED UPON ADVERSE POSSESSION AND UPON RE-
ENTRY FOR CONDITION BROKEN, AND PROVIDING LAWFUL
MEANS FOR MAKING SUCH CLAIMS MATTER OF PUBLIC
RECORD.

Act 2.

As to claims on ad-
verse possession
etc.

I. Be it enacted: That from and after the passage of this Act no person shall have any right or title to or ownership of, any lands whatever within this Commonwealth by reason of adverse possession of the same for any length of time, or by reason of the re-entry of the claimant for condition broken, until such claimant has filed a petition in the Court of Common Pleas of the proper County in the nature of a bill in equity to perpetuate testimony and quiet title, which shall mention as defendant the persons who were last before the complainant lawfully possessed of the lands claimed; and shall accurately describe the lands claimed, and set forth the facts of open adverse possession and improvement, or re-entry, relied on by the petitioner, and pray for a decree declaring and quieting the title of the petitioner to the land mentioned in the petition.

II. On the filing of such petition the Court shall issue a Citation to the defendants, and to all whom it may concern, which shall be served by the Sheriff of the proper County upon residents therein as Summons are served, on non-residents by sending a true and attested copy thereof to their last known place of residence by registered mail, by posting a true and attested copy thereof conspicuously on the premises claimed, and by publishing a true copy thereof once a week for four weeks in two newspapers of general circulation published in the said County. The said Citation shall state the claim of the petitioner, fix a day for a hearing at least sixty days from the date of issuing the writ, and command the defendants and all whom it may concern to be and appear in the Court and answer the petition on the said date, or be forever debarred.

III. On the return-day of the said Citation the Court shall hear the cause, and if no defendant appears or answers the petition, shall hear the evidence offered by the petitioner in support of the claim, and if due proof is made to the satisfaction of the Court shall enter a decree quieting the title

of the petitioner and declaring him to be entitled in fee simple, or as the evidence may warrant.

IV. If on the return-day of the said Citation any defendant appears and files an answer, the Court shall have power to frame an issue to try the facts in dispute by a jury, upon whose verdict the Court shall decide the cause, and shall hear the parties on all questions of law raised, and enter final decree accordingly.

V. From such final decree any party to the cause may take an appeal to the proper Appellate Court within thirty days after the entry thereof, and not afterwards.

VI. All Acts or parts of Acts inconsistent with the provisions hereof are hereby repealed.

AN ACT

Act 3.
Establishing a Registry of Surveys.

TO PROVIDE FOR THE REGISTRATION BY THE COUNTY SURVEYOR OF EACH COUNTY CONTAINING LESS THAN FOUR HUNDRED THOUSAND INHABITANTS, OF ALL TRANSFERS OF REAL ESTATE OR ANY SHARE THEREIN, OR TITLE OR INTEREST THERETO, PROVIDING CERTAIN DUTIES IN RELATION THERETO, BY OWNERS, HEIRS, AND DEVISEES OF REAL ESTATE, AND ALSO BY RECORDERS, PROTHONOTARIES, CLERKS OF COURTS AND REGISTERS OF WILLS, AND PUNISHMENT FOR WILFUL VIOLATION OF THE SAME.

Be it enacted, etc.

1. That from the date of the approval of this Act, it shall be the duty of the County Surveyor of each County to prepare a map of such County, suitably divided into plans or sections to show the situation and dimensions of such property therein, such property being separately numbered, which numbers shall refer to index pages bound in book form, which shall show the name or names of the owner or owners, with such succession of blank pages and columns—three columns or spaces for each property—as will permit on the first column or space the names of all future owners, on the second column or space the names of mortgagees with the date and record of mortgage and of the successive assignments and final satisfaction thereof, and on the third column or space the record

of all recorded instruments concerning the property, but not absolutely transferring the ownership thereof, with reference in all cases to the date of the instrument registered and to the book and page of the record thereof, and the said Surveyor shall so keep the said book of plans and indexes as to show at all times who are the owners of and mortgagees of the lots as registered and by additional entries shall show all divisions and sub-divisions of lots in the same manner.

2. That it shall be the duty of the Recorders of Deeds before delivering any recorded deed, mortgage, assignment of mortgage or other written instrument of or concerning real estate, to the owner thereof, to furnish such deed, mortgage or other written instrument to the County Surveyor of the proper County to be registered in accordance with the provisions of this Act, and in all cases of judicial sales or transfers of title to, or partitions of land by judgment of any Court, or by judicial order or decree, it shall be the duty of the Clerk or Prothonotary of such Court to furnish the recorded Sheriff's or Marshal's deed, or a correct copy of such judgment, order or decree to the County Surveyor, and no Sheriff's or Marshal's deed shall be delivered to the purchaser until it has been registered in accordance with the provisions of this Act.

3. That from and after the passage of this Act, all executors, administrators, heirs and legatees shall within thirty days after the death of the decedent, under whom any title to real estate passes, file in the office of the Register of Wills of the proper County an inventory which shall specify plainly and separately each lot of real estate which such decedent owned, or to which he was in any way or manner entitled at the time of his death, setting forth a description of each lot, the estate and right of the decedent therein, with reference to the deed or other origin of his title thereto, and also a statement of the names of the dowager or tenant by courtesy, if any, and all heirs, legatees and devisees, in any way entitled to such lands, either by Will or by descent from or under such decedent, which said inventory and statement shall be verified by the affidavit of the executor, administrator, or other party filing the same. And the said inventory and statement shall be prepared and filed in duplicate of which one shall be filed of record in the office of the Register of Wills and the other shall be furnished by the Register to the

County Surveyor who shall register the transfers by Will or descent therein stated in accordance with the provisions of this Act.

4. That it shall be the duty of the Recorders of Deeds, upon the satisfaction of record of mortgages to furnish the County Surveyor with such information of the fact as will enable him correctly to register such satisfaction in the proper index of plans.

5. That the cost of registry shall be the sum of twenty-five cents for each transfer of each lot of ground registered from deeds, mortgages and inventories from the Registers of Wills and ten cents for the registry of each assignment of mortgage or satisfaction thereof, or assignment or extinguishment of ground rent or assignment of lease, and ten cents on the registry of each judgment, judicial order or decree, which said sums shall be collected by the Recorders, Registers, Prothonotaries and Court Clerks and be by them paid to the County Surveyors, when such deeds, inventories or other evidences of transfer are delivered for registry, which fees shall be the pay of the County Surveyor.

6. That any Recorder of Deeds or Clerk or Deputy of such Recorder, who knowingly delivers any deed or other writing within the provisions of this Act, to the owner thereof, or to any person acting for the owner, before the same has been registered by the County Surveyor, or any Register of Wills, or Clerk or Deputy of such Register, who wilfully fails to forward to the County Surveyor any inventory of real estate filed in his office for registry, under the provisions of this Act, and any Prothonotary or Clerk of Court or Clerk or Deputy of such Prothonotary or Clerk who wilfully fails or neglects to forward for registry to the County Surveyor any Sheriff's or Marshal's deed or copy of any judgment, judicial order or decree of the proper Court ordered to be registered by the County Surveyor by the provisions of this Act, shall be guilty of a misdemeanor, and being thereof convicted, shall pay a fine of not less than one hundred dollars or more than five hundred dollars and suffer imprisonment not longer than six months, either or both, at the discretion of the Court.

7. That for any administrator, executor, heir, devisee or other party claiming to be interested, knowingly and wilfully to make any false statement in any inventory of real estate, or knowingly and wilfully to file such false statement

or inventory in the Register of Wills' office under the provisions of this Act, is hereby declared to be forgery, and for any person to knowingly and wilfully swear or affirm to such false inventory as aforesaid is hereby declared to be perjury and punishable accordingly.

8. That it shall be lawful for any person being the owner of land or of any estate or interest therein, or holding mortgage or mortgages secured upon any land or lands, to produce to the County Surveyor of the proper County his deed or deeds for the same, or mortgage or mortgages secured thereon, which shall be registered by the said County Surveyor in accordance with the provisions of this Act: Provided that such deeds and mortgages shall have been first recorded according to law.

9. That the plans and indexes of the said County Surveyor kept under the provisions of this Act, are hereby declared to be public records and copies thereof, duly certified, by the Surveyor, shall be competent evidence in legal proceedings, and the said records shall be kept at the County-seat of the proper County in the office of the County Surveyor and shall be open to public inspection without charge at the same times as other public records.

10. That the provisions of this Act shall apply to all Counties in this Commonwealth containing a population of less than four hundred thousand inhabitants.

11. That all laws or parts of laws inconsistent with the provisions hereof be and the same are hereby repealed.

AN ACT

TO PROVIDE FOR THE JUDICIAL RECORDING OF LAND TITLES IN CERTAIN CASES IN COUNTIES OF THIS COMMONWEALTH CONTAINING MORE THAN 400,000 INHABITANTS; AND PROVIDING MEANS OF TRANSFER OF TITLE TO, AND ENTRY OF CLAIMS, ENCUMBRANCES AND LIENS AGAINST LANDS AFTER THE TITLES THERETO ARE JUDICIALLY RECORDED.

Act 4.

Recording Land Titles, etc.
Title.

1. Be it enacted: That from and after the.....day of, A. D., next after the passage of this Act, there is hereby established in each County of this Commonwealth containing more than 400,000 inhabitants a Division of the Orphans' Court of such county to be known

Division for Land Titles and Liens.
Orphans' Court.

as the "Division for Land Titles and Liens," which shall have and exercise within the respective Counties the powers, duties and authority provided by this Act.

Terms. The said Court shall have the same terms, and use the seal of the Orphans' Court of the County, and the Clerk of the Orphans' Court shall also be Clerk of the said Division thereof, and it shall be presided over by one or more Judges of the Orphans' Court of the same County, as the said Judges may assign and direct.

Rules. The said Judges shall have power and authority to adopt rules of practice and procedure in and for the said Division, which said rules, however, shall accord with the provisions of this Act and of the Constitution.

Procedure. 2. The procedure in the said Division for Land Titles and Liens shall be according to the rules of equity upon bill, or petition, citation and answer; the process thereof shall bear the seal of the proper Orphans' Court.

Clerical force. 3. The Orphans' Court of each of said Counties shall have power and authority to appoint a Deputy as First Deputy Clerk of the said Division with such subordinate clerks as may be needed to adequately conduct the clerical business of the said Division, and also criers and tip-staves in personal attendance in the court room or rooms of the said Division, as other clerks, criers and tip-staves of the said Orphans' Court are appointed, and at the same salaries.

The said Orphans' Court shall also have power and authority to purchase and provide for the use of the said Division, appropriate dockets, books of record, stationery, blank forms, and furniture, to the same extent and in the same manner as such articles are now provided for the said Orphans' Courts.

Heirs and Devisees to record their titles to land before dealing with the same. 4. That from and after the said date when this Act goes into effect, it shall be unlawful for any persons owning land in the said Counties or any shares or interests therein by the will, or intestacy of any decedent, in fee simple, to sell, mortgage, lease, make partition or encumber the same until their title thereto has been recorded under the provisions of this Act.

Owners in fee simple may record. 5. That any person or persons or corporation claiming singly or collectively to own lands within the said Counties in fee simple, or to have the power of appointing or disposing of the fee simple of such lands, may voluntarily record their titles under the provisions of this Act.

6. That infants or persons under disability shall be Infants, etc represented in any proceeding under this Act by their legally appointed guardian or committee.

7. That in proceedings under this Act, wives and Parties. husbands of owners, tenants in dower and tenants by the courtesy, tenants for life, and lessees of terms longer than seven years, trustees and *cestui que trustent* are owners who must join in the proceeding as petitioners; and in such proceedings the owners of ground rents and mortgagees of the land, subject to the proceeding, may join; if they do not the recording decree shall state such ground rent or mortgage specially as excepted therefrom.

8. Applications for recording of titles under the pro- Procedure. visions of this Act shall be by petition or bill in equity in the nature of a bill praying leave to perpetuate the evidence of the title to the land, the subject of the bill, and surrender the same to the Commonwealth accepting from the Commonwealth her warrant in fee simple to the petitioners, the title being placed under the protection of this Act. All bills shall be drawn upon a uniform plan as directed by Rule of Court, and shall contain a correct description of the land referring to the street and house number, if any, and to the official survey; it shall contain the names and places of residence of all parties making up the ownership in fee simple, the assessment of the land for taxation, the names of adjoining owners, the names of all persons in actual occupation of the premises, the record of the deed, will or descent under which title is claimed, with a brief memorandum or abstract of the title for at least thirty years and with a memorandum also of all encumbrances, liens and adverse claims known to the petitioners with the names and places of residence, so far as known, of all encumbrances, lien creditors, and adverse claimants.

The petition must be signed by all parties, and verified by the affidavit of at least one of them, and the parties identified by writing signed by their counsel.

9. That petitioners who are not residents of the Com- Non-resident petitioners. monwealth shall in the petition appoint a person resident within the proper County to represent them, on whom all legal notices relating to the proceeding may be thereafter served.

10. That if any right of way or other easement is Easements. claimed as appurtenant to the land subject to the petition or

if such land is subject to any right of way or other easement, public or private, the same shall be therein set forth.

Deeds to be produced.

11. That with the said petition the petitioner shall also produce to the Court all the muniments of title concerning the land which is the subject thereof, so far as the same are under his control.

Official Examiners of Titles.

12. That the said Court shall appoint a sufficient number of Examiners of Titles who shall be members of the bar of at least ten years' standing, and who shall not practice law, or be members of, or concerned with any law partnership during the time of their service as such Examiners, and who shall receive payment out of the fees paid and hold their office subject to the order of the Court.

Reference to Examiner of Title.

13. That upon the filing of a petition under this Act the Court shall refer the same and the accompanying muniments of title to one of the Examiners of Title, to examine the same, and any records referred to therein, who shall also take testimony of descents and all other material matters relating thereto and report the same to the Court. The Examiner's Report shall contain a statement or opinion as to the title, with a list of the names and addresses of all persons who appear to have any interest or estate whatever in or to the land in question. If any person, whose address is unknown, appears to the Examiner to be in any manner entitled special effort shall be made to satisfy the Examiner as to the last known place of residence of such person.

Hearing on the Examiner's Report.

14. That upon the filing of the Examiner's Report a time for a hearing shall be fixed, at a convenient time, not less than thirty days from the date of such filing, notice of which hearing shall be given by Citation issued under the seal of the Court, briefly reciting the petition and describing the land, and citing by name all who have any estate or interest whatever, the adjoining owners and the occupants, so far as known, and to all whom it may concern to appear at said Court on the day fixed, and show cause, if any they have, why the prayer of the petition should not be granted: "And unless you appear at the said Court at the time and place aforesaid the said petition will be taken by you to be confessed and judgment against you will be entered thereon, and you will be forever debarred from contesting against the said petition, or any decree thereon entered."

Notice by Citation.

Service of Citation.

15. The said Citations shall be served on residents within the Commonwealth as writs of summons are served,

but such service may be made by any person; proof of such service being made by affidavit of the person serving the same; and on persons not resident within the Commonwealth by sending to each of them by the Clerk of the Court a true copy of the Citation by registered mail, to the address specified in the Examiner's Report, and to all whom it may concern by advertising the entire list of hearings once a week for three weeks in two newspapers of general circulation in the proper County, and in one legal newspaper or periodical, and a true copy of the Citation shall also be conspicuously posted on the premises the subject of the petition. The Court shall be satisfied by the certificate of the Court Clerk of the service so far as possible upon non-residents, and by advertisement, and may make further and special order for the giving of notice of any hearing.

16. That the said Court is hereby authorized to appoint guardians or committees *ad litem* for minors and persons under disability not properly represented. Guardians ad litem.

17. On the return-day of the Citations, the Court shall call the list of petitions fixed for a day, with power to enter a decree by confession upon all who do not appear and answer, no reason to the contrary appearing. After such default and order the Court may enter a decree confirming the title of petitioner and ordering the same to be recorded, but the Court shall not be bound by the report of the Examiner, and shall have full power and authority to take other or further proof, to continue the hearing, or to direct notice to be sent to persons or addresses not recommended by the Examiner. Procedure on Hearing.

18. That if in any case an appearance is entered, and answer filed, the cause shall be set for a special hearing, default being entered as to all who have not so appeared and answered; and at such hearing the Court shall review the Examiner's Report and hear all proper legal evidence for and against the petition.

19. That in all cases, both contested and uncontested, the Court shall file an adjudication based on the Examiner's Report and the evidence taken finding the facts and law of the case, and where the petition is granted the names and addresses of all persons entitled, and also of all mortgagees, encumbrancers and holders of liens, and the order of their priority. Adjudication.

20. That where on any hearing any legal outstanding estate or lien is made to appear, the Court may decree the title of the petitioner to be recorded subject to the same, or an issue may be awarded to the Court of Common Pleas of the proper County to try the question before a jury, or the petition may be dismissed without prejudice to the legal rights of the parties.

Confirmation.

21. That all adjudications of the Judges upon hearings shall be confirmed *nisi*, at the time of filing the same, and confirmed absolutely on or after the Third Saturday succeeding, Provided all costs due are paid to the Court Clerk and unless exceptions are filed thereto.

Exceptions.

22. That on the filing of exceptions the entire record, the adjudication and the exceptions thereto, shall be heard by the Orphans' Court *in banc*, on the argument list, and final decree entered thereon by the said Court.

Survey may be ordered.

23. That in any case wherein the description of the land is alleged to be inaccurate or the official survey insufficient, or incorrect, the Court is hereby authorized to order a survey of the land to be made at the cost in the first instance of the party demanding the same.

Final Decree.

24. That if the Court, after final hearing, is of opinion that the petitioner has title proper for recording, a decree granting the prayer of the petition confirming the title and ordering the same to be recorded shall be entered, proof being made to the satisfaction of the Court that all taxes of every kind, municipal assessments and liens have been paid in full. Every decree of recording shall bind the

Effect of Decree.

land and quiet the title except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, including the Commonwealth, whether mentioned as a party in the proceeding, or included in the advertised notice "to all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of the person affected thereby, nor by any proceeding at law or in equity for reversing judgments or decrees. Provided, how-

Bill of Review.

ever, that a bill of review may be presented as in other cases in the Orphans' Court to correct error apparent on the fact of the record, or caused by mistake, or by fraud of the petitioner, in all cases where the rights of *bona fide* purchasers for value without notice of the error, mistake or fraud have not intervened. And Provided, also, that in all cases appeal may be taken by any party to the cause to

the Supreme or Superior Court within thirty days after the rendition of such final decree and not afterward.

25. That every decree recording title shall be evidenced by a Certificate or Warrant from the Commonwealth to the petitioner or petitioners, one to each of them, which shall be numbered consecutively in the order in which they are issued, and prepared in duplicate, of which one shall be kept of record and bound in consecutive order in substantially bound books called Warrant Books, and the other shall be delivered to the petitioner, which Certificate or Warrant shall be under the seal of the said Orphans' Court, and in form as follows:

Warrants to recorded owners.

In Duplicate

"No.

THE COMMONWEALTH OF PENNSYLVANIA, acting herein by the Division for Land Titles of the Orphans' Court in and for the County of hereby Certifies that by virtue of a decree of the said Court, entered on the day of A. D. 190., of No. of Term A. D. 190., Record of Title No. (John Smith) of No. Street in the City of, (blacksmith) and Mary (his wife) are recorded as the owners in fee simple of (description of the lot).

Form thereof.

UNDER AND SUBJECT to the exceptions and provisions of the Act of Assembly approved the day of A. D. 190, entitled An Act to provide for the Judicial Recording of Land Titles, &c., and also to the objections, claims and liens here set forth.

(Statement in Tabulated Form.)
and none other whatsoever.

IN WITNESS WHEREOF the Hon. (William B. Hanna) President Judge of the said Court, hath hereunto directed the seal thereof to be affixed this day of in the year of our Lord one thousand nine hundred and

Attest:

[SEAL OF
THE COURT.]

.....
Clerk of the Court.

Claims to which
Warrants are sub-
ject.

26. That the Warrants and Certificates issued under the provisions of this Act shall be under and subject:

1st. To liens, claims and rights arising or existing under the laws or Constitution of the United States which the statutes of this Commonwealth cannot require to be recorded.

2nd. To the provisions of the present Act of Congress establishing a Uniform System of Bankruptcy, and any amendments thereto, or other Acts of Congress which may in future be passed regulating bankruptcy.

3rd. The right of Eminent Domain of the United States, of this Commonwealth, or of their lawful assigns, of such right.

4th. Any lease for a term not exceeding seven years, or from year to year, and

5th. To any exceptions, claims or liens stated on the Certificate. Except as aforesaid the effect of every such Certificate or Warrant shall be the same as if the recorded owner named therein was the holder of the duly executed Warrant by Letters Patent from the Commonwealth of the estate or interest as therein mentioned of the land therein described as of the date stated thereon.

Recording Decrees
to be registered,
etc.

27. That every recording decree under this Act shall be registered in the office for Registry of Surveys of the proper County, and be noted on the proper Record of Title and Indexed Plan-book of the said Court.

Record of Titles.

28. That a correct abstract of every recording decree shall be entered in a book of Record, duly indexed, called a RECORD OF TITLES, one on a page, conveniently ruled to show: 1. Future transfers of the fee simple; 2. Future adverse claims against the recorded title, references to creation of trusts, and of easements and estates less than the fee; 3. Judgments, liens, mortgages and land debts; 4. The expiration of leases, trusts, life estates, and all other transient rights, and the discharges of liens and claims.

Procedure on Sub
Division of Lands,

29. That any recorded owner desiring to subdivide the land Warranted may do so by surrender of his Warrant with a petition for subdivision and an official survey thereof, whereupon the Court shall have authority to issue a new separate Warrant for each subdivision, with a new entry in the Record of Titles for each Warrant issued; the original Warrant being forthwith cancelled and the original entry

in the Record of Titles marked closed by subdivision with reference to the Warrants issued.

30. That as to land of which the title is recorded under the provisions of this Act, no estate in, claim to, or lien against the same shall be of any validity or legal force whatever until the same is recorded according to the provisions hereof. From and after being recorded it shall have its proper lawful force, claim or priority as appears upon the Record of Titles, under the direction of the said Court.

All liens and claims to be recorded.

31. That every Warrant or Certificate issued to any recorded owner of land under the provisions of this Act, shall have printed upon the back a Surrender thereof in form following:

Sale by Surrender of Warrant only.

“To the Division for Land Titles, Orphans’ Court of County.

Form of such Surrender.

In the Commonwealth of Pennsylvania:

May it please your Honors: This is to certify that in consideration of the sum of dollars, paid by (Thomas Jones) of No. Street, in the city of (married to wife) (carpenter), I (or we) have sold to him (or them) the land (or such part of or interest in it as is sold) mentioned in this Warrant, and pray that it be transferred to him, and therefore surrender the same to the Commonwealth of Pennsylvania to the use of the said vendee: I aver that there are no liens or adverse claims against my said Estate not noted in the proper Record of Title except (list).

Signed this day of, A. D. 190..

Witnesses present who hereby

identify the said vendors. (Signature of Vendors.)
(Affidavit of Vendors.)

THIS CERTIFIES that the above statements are true, and I pray your Honors to issue Warrant to me according to the terms of the above Surrender.

Signed this day of A. D. 190..

Witnesses present who hereby

identify the said vendee: (Signature of Vendee.)

And that all sales of land of which the title is recorded under the provisions hereof shall be by surrender of the Warrant or Certificate of the same by all the recorded owners, according to the said form, and of petition for a new Warrant by the vendee in the form aforesaid.

Identification of parties.

32. That the signatures of all vendors and vendees must be identified to the satisfaction of the said Court by respectable known witnesses, at least two witnesses to each signature.

Procedure upon Surrender.

33. That upon the surrender for transfer as aforesaid of any warrant as aforesaid, if any question as to the title arises, the record shall be laid before a Judge of the said Court, who shall grant the parties a hearing, and decree as justice and equity require; and the said Court shall have power before such hearing to refer the question and record to one of the Examiners of Title to examine the record, take testimony and report thereon.

34. That if no such question arises the said surrender and petition shall be by the Court referred to one of the Examiners of Title, who shall examine, accept the same and order the Clerk to issue a Warrant to the vendee of the land sold, which Warrant shall set forth the claims, estates, and liens appearing on the Record of Title to the land conveyed, on the date thereof, and be under and subject to the same.

35. That each vendee's Warrant shall be duly entered in its proper Record of Title on the day it is issued and take legal effect immediately upon said date and entry.

36. That upon surrender of Warrant for the purpose of transferring only a portion of the land, or estate therein of the recorded owner, the Warrant surrendered shall be cancelled, a Vendee's Warrant be issued for the estate, share or interest conveyed, and a Warrant be issued to the vendor for the estate, share or interest reserved, the surrendered Warrant being noted on the proper Record of Titles as subdivided.

37. That every estate, interest or share of, in or to lands of which the title is recorded under the provisions hereof, except leases from year to year or for a less term than seven years shall be transferred by surrender as aforesaid, and not otherwise.

Warrants to Trustees, etc.

38. That where transfers *inter vivos* are made to trustees, the terms of the trust shall be fully noted in the surrender for the same, and the Warrant thereupon shall be marked with the words "In Trust," and no surrender of such

Warrants shall be accepted or transferred until after the question has been heard by the said Court, and the surrender and transfer prayed for found to be in accordance with the terms of the trust, and all other Warrants to any persons in a fiduciary capacity shall be noted and dealt with in the same manner.

39. That in all cases where lands of which the title is recorded under the provisions hereof, or any interest therein, are sold by judicial sale, surrender of the estate or interest sold shall be made to the use of the purchaser by the judicial officer who makes such sale, which surrender must refer to, but need not be attached to, the Warrant to which it properly refers; and the prayer for Vendee's Warrant shall be accompanied by a certified copy of the order, judgment, writ or decree upon which the rule is made, and also the proper order of Court confirming the sale, which with the proper Record of Title shall be by the Court referred to one of the Examiners of Title, the outstanding Warrant in the name of the defendant in the execution be cancelled, a Warrant be duly issued to the purchaser at the judicial sale and the proper entries be made in the Record of Title under the direction of the Court. As to Judicial Sales.

40. That in all cases of the death of the owner of lands the title to which is recorded, the executor, administrator or heirs shall within thirty days after the death of such owner surrender all the Warrants thereof to the use of the devisees or heirs, which surrender must state the names of the surviving husband or wife of the decedent and of all the persons in any way entitled by reason of the death or under the Will of such decedent, and if trusts are created by such Will the same shall be set forth. On the death of owner, his Warrants to be surrendered.

41. That upon such surrenders being made the said Court shall have authority on the petition of any person interested to appoint a proper person to administer the realty so surrendered under the direction of the Court pending the settlement of the estate of the decedent, and in the event of the lands or any part thereof belonging to the estate of any decedent being ordered to be sold to pay decedent's debts, such judicial decree and order shall be entered on the proper Record of Title and the sales shall be made by the said administrator of the realty. Court may appoint an Administrator of such realty

42. That upon the final settlement of the account of the executor or administrator, the debts of the decedent being Procedure after final settlement.

paid in full, and the lien of decedent's debts not of record being discharged, either by lapse of time, or by order of Court, it shall be lawful for the devisees and heirs of such decedent to file in the said Division a petition under oath setting forth the facts, showing specifically their several interests and estates in the lands of such decedent, and praying that Warrants be issued to them accordingly, which petition shall be referred to one of the Examiners of Title to find all the facts and report them to the Court, on which report Citation shall issue, hearing be had and adjudication filed and confirmed, and Warrants issued and entered on the proper record of Title in the same manner and with the same effect as upon petitions on the original surrender.

Procedure for noting
adverse claims.

43. That all estates in, and adverse claims to or against lands the title to which is recorded under the provisions of this Act arising subsequent to such recording, must be made known to the said Court by the petition of the claimant praying that the estate or adverse claim of the petitioner be recognized and entered of record in the proper Record of Title, whereupon the Court shall issue Citation to the recorded owners, and on the return thereof shall hear any testimony offered, and make such order thereon as justice and equity require. Provided, however, that all adverse claims and subsequent titles shall be deemed to be waived by their owners, and notice and knowledge thereof shall bind no one whatever until such petition is filed as aforesaid.

Daily notation of all
judgments and
liens in the proper
Record of Title.

44. That in all Counties to which this Act applies, the judgment and lien indexes and specifications of judgments of all Courts of Record shall be kept in duplicate, one for its own record and one for the Division for Land Titles and Liens of the proper County, and for the purpose of preparing such duplicate the Chief Clerk of the said Division shall be, *ex officio*, a Deputy of the Prothonotary of the Courts of Common Pleas and of the Clerk of Quarter Sessions and of the Federal Courts and also of the Sheriff, of the Recorder of Deeds, of the Register of Wills, and of the Bureau or Board of Surveys, and all attachments, judgments and liens of the said Courts and Sheriff's and Marshall's sales shall be entered in the proper Records of Title on the day of their rendition or on the day of sale, and all stays, modifications, or other judicial orders as to judgments and liens shall also be entered in like manner.

45. That the owner of any land, or estate or interest therein, the title of which is recorded under the provisions of this Act, may create mortgage liens upon the same by producing his Warrant for his said land, and his bond or obligation for the debt in any of the forms now in use, together with a petition to the said Division for Land Titles and Liens praying for the issue of a mortgage lien accompanying and securing the bond or obligation therewith produced; whereupon the said Court shall refer the said petition and papers to an Examiner of Title, who shall examine the same and the proper Record of Title, and if the record justifies such a mortgage lien as is prayed for, shall report the same to the Court and the prayer of the petition shall be granted. If the Examiner's Report is adverse to the issue of the Certificate of mortgage lien prayed for, the petition may be ordered by the petitioner for a hearing by the Court, at which the petition, Record of Title and all other pertinent evidence shall be heard by the Court, and such order or decree entered as the Court may find warranted according to justice and equity.

Creation of Mortgage Liens.

46. That the owner of any land or estate, or interest therein, the title of which is recorded under the provisions of this Act, may create negotiable liens upon the same, not accompanied by the bond or obligation of such owner, and for the payment of which the land alone shall be liable; the said negotiable liens shall be prayed for and entered in the same manner as mortgage liens; but the said negotiable liens may be drawn payable to the order of the lien creditor, or to bearer, and title to the same shall pass by endorsement in the same manner as promissory notes; but no endorser shall be liable to pay any part of the debt mentioned therein, and all negotiable liens shall state the day when the debt therein mentioned is to fall due.

Creation of Negotiable Liens, or Land-debts.

47. That all Warrants for Mortgage Liens and Negotiable Liens shall be consecutively numbered and shall state upon their face the amount of the debt, the terms of interest and payment, and shall also certify the assessment of the lien property for taxation and also in tabulated form all prior liens. They shall refer to the proper Record of Title and shall follow the same form as the Warrant of Ownership; and Warrants of Mortgage Lien shall have printed on their backs similar short forms of assignment and surrender, the form of surrender acknowledging payment in full. They

Form of Lien Warrants.

shall be written in duplicate, one original remaining in the office of the said Division, and the other be issued to the lien creditor.

Payment of Liens to be noted.

48. That all Warrants of Lien, assignments, payments on account, or in full satisfaction and discharge thereof, shall be entered in the proper Record of Title.

Events affecting titles to be noted.

49. That the marriage of owners of land, recorded under this Act, and the divorce or death of husbands or wives of such owners, the death of tenants for life, and *cestui que trustent* for life, the happening of any contingency on which any estate or interest may arise, or fail, the expiration wholly or in part of trusts, and any other event affecting the title of such land, shall be suggested to the said Court in writing supported by affidavit, and duly entered in the proper Record of Title, and until or unless this is done all right whatever based on such fact shall be taken to be waived and released by all persons in any way benefited thereby, and the death or removal of trustees, or the appointment of trustees shall be certified to the said Court, and the Warrants of such trust estate and the proper Record of Title shall be noted accordingly.

Procedure on Warrants for Liens, due and unpaid.

50. That Warrants of Mortgage Lien, or Negotiable Lien when due, unpaid, or in default by their terms, shall be enforced by writ of *Scire Facias*, served on the recorded owner and on the occupant of the liened premises, issued out of the said Division, on which similar legal proceeding shall be had as on Writs of *Scire Facias sur Mortgage*, and all sales under Writs of *Levari Facias* shall be noted on the proper Record of Title, and on confirmation of such sales Warrants of Ownership duly noted shall be issued to the purchasers thereof.

Decrees in Equity to be noted.

51. That all orders or decrees of Courts of Equity making partition of, or in any way concerning the title enjoyment, or easements of or against any lands the like of which is recorded by virtue of this Act, shall be noted in duplicate and one duplicate entered on the proper Record of Title in the same manner as judgments and liens at law.

Bankruptcy Proceedings to be noted.

52. That in all cases of bankruptcy or of assignment for the benefit of creditors, the trustee in bankruptcy and assignee in trust for creditors shall surrender the Warrants of Ownership, or of Mortgage or Negotiable Lien of the bankrupt or insolvent and be entitled to receive proper Warrants of Ownership, and transfer of the Warrants of Liens, which

Warrants shall be dealt with under the order of the proper Court according to law, subject to the provisions of this Act.

53. That whenever any land, the title to which is recorded by virtue of the provisions of this Act, is taken, injured or destroyed by exercise of the right of eminent domain, such action shall be noted on the proper Record of Title, and where land is taken new Warrants shall be issued, as in other cases of the subdivision of land. Act of Eminent Domain to be noted.

54. That upon the original recording of title of lands under this Act, and also upon every subsequent entry of record of title in the heirs or devisees of any owner, there shall be paid to the Chief Clerk of the said Court one-tenth of one per cent. of the last assessed value for taxation of the real estate as an Assurance Fund, which shall be paid by the Clerk each month with a plain statement to the State Treasurer, who shall hold the same separate from the other money of the Commonwealth and report annually to the Governor the several amounts, investments and income thereof. Assurance Fund.

55. That any person who had no actual notice of the recording of any title under this Act by which he has been deprived of any estate or interest in the land of which the title is recorded as aforesaid, may within two years next after such deprivation bring an action of assumpsit against the State Treasurer in the Court of Common Pleas of the County in which such land is situate, for the recovery out of the Assurance Fund of any damages to which he may be entitled by reason of such deprivation. The State Treasurer shall be defended by the District Attorney of the proper County, and in case of appeal to the Supreme or Superior Court, by the Attorney General. The measure of damages in such action shall be based on the assessment of the recorded premises for taxation when the deprivation occurred. If the claimant is under legal disability such suit may be brought by his guardian, trustee or committee. Claim

56. That if such action be brought to recover for loss or damage arising only through the legal operation of this Act, then the State Treasurer shall be the sole defendant. But if such action be brought to recover for loss or damage arising on account of any decree made or procured through the fraud or wrongful act of any person not exercising a judicial function, then both the State Treasurer and such person or persons shall be joined as defendants.

57. That if judgment be rendered for the plaintiff in any such action execution shall issue against the defendants, if any, other than the State Treasurer; and if such execution be returned unsatisfied in the whole or in part, or if there be no such defendants, then the Prothonotary of the Court in which the judgment was rendered shall certify to the State Treasurer the amount due on account thereof and the same shall then be paid by the State Treasurer out of the Assurance Fund of the proper County; on which payment the said judgment shall be marked to the use of the State Treasurer, as against all his co-defendants, who shall be and remain liable to the State Treasurer to the full extent of the said payment. If the Assurance Fund of the proper County shall be insufficient to satisfy the judgments certified against it, such judgments shall be paid in the order of their date as money thereafter is paid into said Fund.

58. That the Assurance Fund shall not under any circumstances be held liable for any loss, damage or deprivation occasioned by a breach of trust, whether express, implied or constructive, on the part of the recorded owner of any estate or interest in land.

Construction.

59. That the true intent of this Act is to simplify and expedite the sale and transfer of land, and of the raising of money by the owner upon landed security, and the provisions hereof shall not be construed so as to relieve persons recorded as owners of land under this Act from any lawful burden or duty to which they would be subject if the title was not so recorded, nor so as to change the laws of intestacy or descent as to the titles of heirs or devisees.

60. That from and after the recording of any title under the provisions hereof, all subsequent transfer, devolution, or succession to the land, the subject of the proceeding, must be made in accordance with the provisions of this Act.

Fees and Charges.

61. That the costs and fees of all proceedings under this Act shall be at uniform rates as to the same kind of service in each County, and shall be fixed by Rule of the said Court for each County; but shall not exceed for the services mentioned in this section the sums and rates following:

- A. For each title originally recorded of land assessed
 - for taxation at less than \$2,000.....\$10.00
 - On each additional \$1000, in the assessed value
 - aforesaid 1.00
 - Tax for Assurance Fund one-tenth of one per cent.

- B. For each subsequent transfer by descent the same rates, but free of tax.
- C. For each subsequent transfer by sale half the above rates.
- D. For each Mortgage Lien entered and warranted up to \$1000 \$2.50
For each additional \$100075
- E. For each Negotiable Lien entered and warranted up to \$1000 1.25
For each additional \$100050
- F. For each transfer of Lien noted 1.00
- G. For noting satisfaction of liens and cancelling the Warrants thereof, each50
- H. For noting subsequent adverse claims, marriages, deaths, expiration of trusts, change and discharge of trustees, etc., appointment and discharge of guardians, coming of age of minors, etc., for each entry 2.50
- I. For entering Bills of Review, or to amend the record, each 5.00
- J. For the re-issue of Warrants proved to be lost or destroyed, each 5.00
- K. For the issue of certified copies of Records, \$1 for each sheet of 100 words.
- L. For the issue of copies of Record Exemplified according to the Act of Congress 1.50
- M. For making up and certifying the Record upon Appeals. No charge.

For services not specifically herein provided for, the Court shall provide by Rule as aforesaid, or if the service is extraordinary a reasonable charge shall be fixed by the Court.

62. That if any Warrant of Ownership or of Mortgage Lien is lost or destroyed, the owner may apply to the said Court stating the facts and praying the issue of a duplicate Warrant; which application shall be set for a hearing and advertised as may be directed by the Court, and if on the hearing the proof justifies it the Court may grant the prayer of the Petition, Provided that all such proceedings be noted on the proper Record of Title.

Proceeding as to
Warrants lost or
destroyed,

Record Books. 63. The Records of each "Division of Land Titles" shall be:

- A. Dockets in which shall be noted separately each proceeding to Record a Title, and under the same number each subsequent proceeding involving change of ownership thereof.
- B. Records of Titles as hereinabove directed.
- C. A cadaster, or set of maps or plans of the judicial district showing each lot of ground therein separately owned, with an index referring to the appropriate Record of Title, as to each lot of ground, subject to the provisions of this Act.
- D. Books of Owners' Warrants consecutively numbered.
- E. Books of Warrants of Mortgage Liens consecutively numbered, and
- F. Books of Warrants of Negotiable Liens, consecutively numbered.

And all the above books shall be public records which shall be open to the inspection of the public during the hours of business of each day, Sundays and legal holidays excepted, free of charge, and of which duly certified copies shall be accepted as legal evidence.

Penalties. 64. That the fraudulent alteration of any Records whatever of said Court, or the fraudulent taking out of the office of the Court of any paper filed of record in said Court, shall be a crime punishable as the same unlawful act is, as to the Records of other Courts in this Commonwealth.

That all Warrants of every kind issued under this Act shall be the subjects of larceny.

That to counterfeit any Warrant issued under this Act, or to fraudulently attach the seal of the said Court to any written document, or to fraudulently alter any Warrant or Certificate of the said Court is hereby declared to be forgery and shall be liable to punishment accordingly.

That any person who fraudulently attempts to deal with or who transfers for value any Warrant of Ownership after the title of the recorded holder thereof has been levied upon by lawful execution, or sold at a judicial sale, shall be guilty of a misdemeanor, and being thereof convicted shall make full restitution to the person or persons defrauded, shall pay

a fine not more than one thousand dollars and suffer imprisonment not longer than five years, either or both, at the discretion of the Court.

That any person who fraudulently and falsely personates the recorded owner of any Warrant issued under this Act, or who not being such owner surrenders or attempts to surrender the same, or who fraudulently and falsely personates any intending purchaser, vendee or transferee of such Warrant, or who not being such vendee or transferee applies for or attempts to obtain from the said Court or its officers any Warrant of any kind, or certified copy thereof, with intent to defraud, shall be guilty of a misdemeanor, and the combination of several persons to do any such fraudulent act as aforesaid shall be a criminal conspiracy, and any person or persons thereof convicted shall make full restitution to all persons defrauded, shall pay a fine not more than one thousand dollars and suffer imprisonment not longer than five years, either or both, at the discretion of the Court.

That any officer of the said Court found guilty of any of the unlawful and fraudulent acts mentioned in this section and being thereof convicted, shall be thereafter ineligible to exercise the right to vote at any public election, and shall be ineligible to hold any office of public trust or profit whatever in addition to any other punishment inflicted upon such sentence.

That any person who undertakes to sell any land Warranted under the provisions of this Act, or of any Warrant of Lien, without disclosing to the Court in writing under oath any liens, *lis pendens*, attachments and judgments binding the land or interest to be sold, and known to the said person but not entered upon the proper Record of Title, shall be guilty of a misdemeanor, and shall be liable on conviction to make full restitution to all persons injured, shall pay a fine not more than one thousand dollars, and suffer imprisonment not longer than five years, either or both, at the discretion of the Court.

65. That all Acts or parts of Acts inconsistent with the provisions hereof are hereby repealed.

